

§ 801.68

29 CFR Ch. V (7–1–02 Edition)

Judge, a petition for issuance of a Notice of Intent shall be filed in accordance with § 801.69 of this subpart.

(g) The decision of the Administrative Law Judge shall constitute the final order of the Secretary unless the Secretary, pursuant to § 801.70 of this subpart issues a Notice of Intent to Modify or Vacate the Decision and Order.

[56 FR 9064, Mar. 4, 1991; 56 FR 14469, Apr. 10, 1991]

MODIFICATION OR VACATION OF DECISION AND ORDER OF ADMINISTRATIVE LAW JUDGE

§ 801.68 Authority of the Secretary.

(a) The Secretary may modify or vacate the Decision and Order of the Administrative Law Judge whenever the Secretary concludes that the Decision and Order:

(1) Is inconsistent with a policy or precedent established by the Department of Labor;

(2) Encompasses determinations not within the scope of the authority of the Administrative Law Judge;

(3) Awards attorney fees and/or other litigation expenses pursuant to the Equal Access to Justice Act which are unjustified or excessive; or

(4) Otherwise warrants modifying or vacating.

(b) The Secretary may modify or vacate a finding of fact only where the Secretary determines that the finding is clearly erroneous.

§ 801.69 Procedures for initiating review.

(a) Within twenty (20) days after the date of the decision of the Administrative Law Judge, the respondent, the Administrator, or any other party desiring review thereof, may file with the Secretary an original and two copies of a petition for issuance of a Notice of Intent as described under § 801.70. The petition shall be in writing and shall contain a concise and plain statement specifying the grounds on which review is sought. A copy of the Decision and Order of the Administrative Law Judge shall be attached to the petition.

(b) Copies of the petition shall be served upon all parties to the pro-

ceeding and on the Chief Administrative Law Judge.

[56 FR 9064, Mar. 4, 1991; 56 FR 14469, Apr. 10, 1991]

§ 801.70 Implementation by the Secretary.

(a) Review of the Decision and Order by the Secretary shall not be a matter of right but of the sound discretion of the Secretary. At any time within 30 days after the issuance of the Decision and Order of the Administrative Law Judge the Secretary may, upon the Secretary's own motion or upon the acceptance of a party's petition, issue a Notice of Intent to modify or vacate the Decision and Order in question.

(b) The Notice of Intent to Modify or Vacate a Decision and Order shall specify the issue or issues to be considered, the form in which submission shall be made (i.e., briefs, oral argument, etc.), and the time within which such presentation shall be submitted. The Secretary shall closely limit the time within which the briefs must be filed or oral presentations made, so as to avoid unreasonable delay.

(c) The Notice of Intent shall be issued within thirty (30) days after the date of the Decision and Order in question.

(d) Service of the Notice of Intent shall be made upon each party to the proceeding, and upon the Chief Administrative Law Judge, in person or by certified mail.

§ 801.71 Filing and service.

(a) Filing. All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210.

(b) Number of copies. An original and two copies of all documents shall be filed.

(c) Computation of time for delivery by mail. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, must be received by the Secretary either on or before the due date. No additional time shall be added where service of a document requiring action within a prescribed time thereafter was made by mail.